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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE JESUS LAGUNA,

Defendant and Appellant.

D056076

(Super. Ct. No. FWV036659)

APPEAL from a judgment of the Superior Court of San Bernardino County, Steve C. Malone, Judge. Affirmed.

In this drive-by shooting case, a jury convicted Jose Jesus Laguna of one count of first degree murder (count 1: Pen. Code,¹ § 187, subd. (a); victim: David Velez), and two counts of attempted premeditated murder (counts 2 & 3: §§ 187, subd. (a) & 664; victims: Nicholas Munoz and Michael Garcia, respectively). The jury found true allegations that during the commission of the Velez murder and the attempted murders of

¹ All further statutory references are to the Penal Code.

Munoz and Garcia, Laguna personally used a firearm (§ 12022.53, subd. (b)) and personally and intentionally discharged a firearm (§ 12022.53, subd. (c)).

The jury also found true an allegation that during the commission of the murder, Laguna personally and intentionally discharged a firearm causing death (§ 12022.53, subd. (d)). In addition, the jury found true an allegation that during the commission of the attempted murder of Munoz, Laguna personally and intentionally discharged a firearm causing great bodily injury (§ 12022.53, subd. (d)). At the People's request, the court dismissed an allegation in all three counts that Laguna had a state prison prior within the meaning of section 667.5, subdivision (c).

The court sentenced Laguna to a determinate prison term of 20 years, plus an indeterminate term of 75 years to life, plus two life terms with the possibility of parole.

Laguna appeals his convictions, contending the evidence is insufficient to establish beyond a reasonable doubt that he was the one who committed the shootings. We conclude the evidence is sufficient. Accordingly, we affirm the judgment.

FACTUAL BACKGROUND

A. The People's Case

Shortly after midnight on June 19, 2004, Velez, Munoz, Garcia, and others were standing outside Munoz's brother's residence in the City of Montclair. Munoz testified that a black Jeep Cherokee slowly approached and then stopped in front of the house. Munoz indicated he knelt down to protect himself, saw muzzle flashes coming from the Jeep, and heard several shots. Another witness who was present at the time of the

shooting, Peter Aguilar, testified he heard the shots and saw five or six flashes coming from the car.

One of the bullets hit Velez in the chest and killed him. Another bullet hit Munoz's left thigh. A third bullet passed through Garcia's pants in the area of his left knee, but did not hit him.

Garcia told the police he saw two people in the Jeep. He reported that the shooter was the driver, whom he described as "Mexican, in his twenties, with a mustache and sideburns."

At trial, Garcia confirmed the description of the shooter he had given to the police. He indicated that the front passenger-side window of the Jeep Cherokee was down; the front passenger, whom he could not describe, was reclining back in the seat; and the driver fired the gun through the front passenger window with his right hand while driving with his left hand. Garcia stated the driver fired five or six shots.

Aguilar also told the police he saw two people in the Jeep. He reported that the driver was Mexican and had a mustache.

Another eyewitness, Melissa Marquez, testified she heard five or six shots. She also testified she saw the gun muzzle flashes coming from inside the black Jeep Cherokee.

Officer Chris Dransfeldt of the Claremont Police Department testified that while on duty on the night of June 21, 2004, two days after the shooting, he observed a black Jeep Cherokee crash into another vehicle at the intersection of Indian Hill and Auto Center Drive in Claremont. The Jeep failed to stop and kept going down the road.

Officer Dransfeldt pursued the Jeep, activated his siren and emergency lights, and reached speeds between 50 and 70 miles per hour during a five-minute chase which ended in the City of Pomona. After stopping the fleeing vehicle, Officer Dransfeldt handcuffed Laguna, the driver of the Jeep. Officer Dransfeldt found a six-shot Ruger .357 magnum revolver (the revolver) on the ground about 20 or 25 feet away. Six empty cartridges were in the cylinder of the revolver.

In his testimony, Sophonn Klam indicated he had known Laguna for many years. Klam indicated that Laguna drove a black Jeep Cherokee that belonged to Laguna's mother. Klam denied that he told the police that Laguna had a revolver tucked between the seats of his Jeep.

Detective Eric Cholly of the Montclair Police Department, however, testified he interviewed Klam on June 22, 2004. Klam told Detective Cholly he had known Laguna since they were 13 years old. Klam first said he had seen Laguna with a revolver a few months before that interview. When Detective Cholly asked him when he last saw the gun inside Laguna's car, Klam said he saw the gun in the black Jeep Cherokee a few weeks prior, tucked in between the seats in the center next to the center console.

Robert Ristow, a criminalist with the San Bernardino County Sheriff's Department's crime lab, indicated that gunshot residue particles were found inside the black Jeep Cherokee that Laguna drove. Specifically, the gunshot residue particles were found inside the Jeep on the headliner, the passenger-side visor, and the passenger-side window seal and rubber molding. Ristow opined that gunshot residue particles were put there by the discharge of a gun.

Elena Bezdek, a criminalist with the San Bernardino County Sheriff's Department's crime lab, identified Laguna's DNA on a swab of the revolver grip. She indicated she also found the DNA of at least two other individuals on the grip of the revolver, but Laguna was the major donor who left the most DNA on the revolver grip. On cross-examination, Bezdek stated she did not detect any human DNA on a swab of the revolver trigger.

Kerri Heward, a ballistics expert at the San Bernardino County Sheriff's Department's crime lab, testified she examined and test fired rounds from the revolver. She compared the bullet that killed Velez (which was referred to at trial as Item F associated with bar code No. 04M0000292) with a bullet she test fired from the revolver and opined that the bullet that struck and killed Velez was fired from that revolver.

B. The Defense

Laguna's mother, Delores Laguna, testified she purchased the Jeep Cherokee at a wrecking yard a couple of months before she spoke with a police officer on June 22, 2004, three days after the shooting incident, about the vehicle and where her son was on June 18 of that year. She indicated that Laguna was with her during the evening on June 18, and he had a mustache at that time. On cross-examination, she stated she told the police she went to bed at 11 p.m. that night.

C. Rebuttal

Detective Cholly testified that Laguna's mother told him that on June 18, 2004, Laguna was with her all day until 11 p.m. when she went to bed, and she stated he was at home when she woke up the next morning.

DISCUSSION

Laguna contends the evidence is insufficient to establish beyond a reasonable doubt that he was the one who committed the shootings. He complains that (1) not a single witness identified him as the shooter, (2) there is no evidence he had a motive to commit the shooting, (3) the prosecution's evidence is entirely circumstantial, and (4) the fact that DNA from two other individuals was found on the murder weapon "was powerful circumstantial evidence establishing a reasonable doubt as to whether [he] was the shooter." We conclude the evidence is sufficient to sustain the convictions.

A. *Standard of Review*

When assessing a challenge to the sufficiency of the evidence, we must view the evidence most favorably to the judgment and determine whether any rational trier of fact could have found the elements proven beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Stated differently, "the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

"The same standard of review applies to cases in which the prosecution relies mainly on circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

"The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable." (*People v. Scott* (1978) 21 Cal.3d 284, 296.)

We do not reweigh the evidence, resolve conflicts in the evidence or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.)

B. *Analysis*

After reviewing the entire record in the light most favorable to the judgment, as we must (*People v. Johnson, supra*, 26 Cal.3d at p. 578), we conclude the prosecution presented substantial evidence from which any rational trier of fact could have found beyond a reasonable doubt that Laguna was the person who shot Velez, Munoz, and Garcia. We begin our analysis by noting that Laguna acknowledges on appeal that (1) the six-shot Ruger .357 magnum revolver the police found near the black Jeep Cherokee he drove during the car chase which ended in Pomona on the night of June 21, 2004, two days after the shooting, was the gun that was used in the shooting; (2) the Jeep Cherokee "was the vehicle used in the shooting"; and (3) "the evidence clearly established that [he] picked the gun up and threw it out the window . . . during the police chase."

In addition to the undisputed evidence that two days after the shooting the police found Laguna driving the same black Jeep Cherokee that was involved in the shooting and that Laguna threw the murder weapon out the Jeep window during the car chase, the prosecution presented the eyewitness testimony of one of the victims, Garcia, who stated the shooter was the driver of the Jeep and described the shooter as a Mexican who was in his 20's and had a mustache. Another eyewitness, Aguilar, corroborated Garcia's testimony that the driver of the Jeep was Mexican and had a mustache. Laguna's mother testified that Laguna had a mustache in June 2004.

Garcia's testimony that the driver of the Jeep Cherokee fired the gun through the open passenger-side window from inside the car was corroborated by the expert witness testimony of criminalist Ristow, who stated that gunshot residue particles were found inside the Jeep on both the passenger-side visor and the passenger-side window seal and rubber molding and who opined the particles were put there by the discharge of a gun. Garcia's testimony was also corroborated by another eyewitness, Marquez, who testified that the gun muzzle flashes came from inside the Jeep Cherokee.

The testimony of Klam and Detective Cholly provides additional and strong circumstantial evidence that Laguna was the driver of the Jeep Cherokee at the time of the shooting and that he shot the victims with the revolver that he kept in the vehicle. Klam stated that Laguna, whom Klam had known for many years, drove an orange and black Jeep Cherokee that belonged to Laguna's mother. The record is devoid of any evidence that someone other than Laguna—and, of course, his mother, who owned the Jeep and was not a suspect—ever drove the Jeep. Detective Cholly's testimony shows that when he interviewed Klam two days after the shooting on June 22, Klam told him he had seen Laguna with a revolver a few months before that interview, and he had last seen the gun in the Jeep Cherokee a few weeks before, tucked in between the seats in the center next to the center console.

The undisputed fact that Laguna threw the murder weapon out the window of the Jeep while he was being pursued by the police during the high-speed car chase in Pomona two days after the shooting is circumstantial evidence from which any rational

jury could find beyond a reasonable doubt that Laguna was acting with a consciousness of guilt in his attempt to get rid of highly incriminating evidence.

Furthermore, Officer Dransfeldt testified he found six empty cartridges in the cylinder of the revolver, which he found on the ground near Laguna after the car chase ended with Laguna's arrest, establishing that all six bullet cartridges in that weapon had been fired. Garcia testified the shooter fired five or six shots. Marquez also testified she heard five or six shots.

From the eyewitness identification testimony, the evidence of Laguna's car chase behavior showing a consciousness of guilt, and the physical and circumstantial evidence, any rational jury could find that Laguna had kept the revolver in the Jeep Cherokee that he drove, and he used the revolver to shoot Velez, Munoz, and Garcia on the night in question as he was driving that vehicle. In light of the strong evidence of Laguna's guilt, the fact that DNA from at least two other people was found on the revolver grip does not create a reasonable doubt on the issue of whether Laguna was the shooter. Laguna's complaint on appeal that the prosecution's evidence is "entirely circumstantial" is unavailing because (as discussed, *ante*) the prosecution's evidence included eyewitness descriptions of the shooter. In any event, a conviction may be based on circumstantial evidence. (See *People v. Maury*, *supra*, 30 Cal.4th at p. 396.) Laguna's complaint that the prosecution presented no evidence that he "had any motive to commit the shooting" is also unavailing because the absence of evidence of motive is irrelevant where (as here) the evidence is otherwise sufficient to sustain the judgment.

For all of the foregoing reasons, we conclude the prosecution presented substantial evidence from which any rational trier of fact could have found beyond a reasonable doubt that Laguna was the person who shot Velez, Munoz, and Garcia. The eyewitness testimony and physical and circumstantial evidence, viewed in the light most favorable to the judgment, amply supports Laguna's convictions. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.